151 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Southwest Power Pool, Inc. Docket Nos. ER15-788-000
ER15-788-001

ORDER REJECTING TARIFF REVISIONS

(Issued June 12, 2015)

1. On December 31, 2014, Southwest Power Pool, Inc. (SPP) filed proposed revisions to its Open Access Transmission Tariff (Tariff) to modify the process by which the SPP Market Monitoring Unit (market monitor) screens for market power abuse involving uneconomic production from a generator (December 2014 Filing). In this order, we reject SPP's proposed Tariff revisions.

## I. Background

2. In the December 2014 Filing, SPP filed revisions to section 4.6.1 of Attachment AG (Market Monitoring Plan) to modify the process for screening for uneconomic production. SPP states that uneconomic production is a means by which a market participant can manipulate the SPP market. SPP explains that a generating resource in the SPP market may be located near a transmission constraint that could be over-loaded by that resource's output. SPP asserts that in such circumstances, the Locational Marginal Price (LMP) at the applicable resource settlement location could decrease significantly, and LMPs on the relieving side of the transmission constraint could rise. SPP adds that a market participant could receive an uplift payment because of the low LMP on one side of the constraint, and it could receive high energy payments for any resources it owns on the other side of the constraint. SPP states that to avoid such circumstances, the market monitor targets a market participant's intentional submittal of inflexible market offers or parameters that do not accurately reflect the relevant resource's operating conditions.[1] On February 27, 2015, Commission staff issued a

[1] December 2014 Filing at 4.

deficiency letter requesting additional information regarding SPP's proposed Tariff revisions. On April 13, 2015, SPP responded.

## II. SPP Proposal

3. SPP states that its current Tariff does not include provisions for identifying when the LMP is low enough for the relevant resource to be deemed uneconomic (when it offers at that price). Moreover, SPP states that there is no provision in the Tariff that currently distinguishes offer parameters that properly represent the resource's actual physical capability from offer parameters that are unreasonably inflexible in light of actual operating conditions.[2]

4. Section 4.6.1 of Attachment AG provides conditions that may indicate that a resource is engaging in uneconomic production. SPP proposes the addition of thresholds that, if violated, would indicate potential uneconomic production by a resource. First, SPP proposes a new overarching condition in section 4.6.1(a) that the LMP at the resource's settlement location be less than 50 percent of the applicable resource's energy offer curve reference level. SPP explains that the market monitor advised SPP that 50 percent is an adequate and appropriate LMP threshold for identification of uneconomic production. SPP asserts that the same 50 percent threshold is used by the Midcontinent Independent System Operator, Inc. (MISO) in its energy markets.[3]

5. Second, SPP proposes revisions to section 4.6.1(a)(3) of Attachment AG, which addresses changes to time-based and other (non-time and non-dollar based) offer parameters. SPP proposes to delete language required in a June 19, 2014 Commission order which provided that potential uneconomic production would be indicated when a resource submits offer parameters that appear "to facilitate production that is otherwise uneconomic."[4] In its place, SPP proposes language that would incorporate the thresholds for economic withholding, specified in section 3.6 of Attachment AF, Market Power Mitigation Plan, into the uneconomic production monitoring provisions in section 4.6.1(a)(3) of Attachment AG. Section 3.6 of Attachment AF specifies that SPP will use thresholds, determined with respect to that resource's reference levels, to identify resource offers that may warrant mitigation. In the case of time-based resource offer parameters, the threshold is an increase in three hours, or an increase in six hours in total

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[2] *Id.* at 5.

[3] *Id.* (citing MISO Tariff, Module D, section 64.1.3).

[4] *See Southwest Power Pool, Inc.*, 147 FERC ¶ 61,212, at P 33 (2014) (June 2014 Order).

for multiple time-based parameters. In the case of resource offer parameters expressed in units other than time or dollars, the threshold is a 100 percent increase for resource offer parameters that are minimum values, or a 50 percent decrease for resource offer parameters that are maximum values. Additionally, section 3.6 establishes a threshold of a 25 percent increase in the minimum economic capacity operating limit to address a local reliability issue. SPP states that it uses the section 3.6 thresholds to compare a resource's submitted offer parameters to reference levels developed by the market monitor based on input from the market participant, and the thresholds can distinguish small operational fluctuations in physical resource parameters from submitted offer parameters that are intentionally unrealistic. SPP asserts that these thresholds are also used for monitoring uneconomic production in the MISO energy market.[5]

6. SPP argues that these revisions are just and reasonable because they are similar to the market monitoring provisions MISO uses in its energy market, were developed in cooperation with the market monitor, and are tailored in a way to focus the accuracy of the market monitor's screening for uneconomic production without harming the market monitor's ability to monitor for such behavior. SPP states that the existence of thresholds in the market monitor's screening process for uneconomic production does not prohibit the market monitor from inquiring into and investigating any scenario of potential uneconomic production, particularly where significant price or make-whole payment impacts are apparent.[6]

## III. <u>Notice and Responsive Pleadings</u>

7. Notice of the December 2014 Filing was published in the *Federal Register*, 80 Fed. Reg. 885 (2015), with interventions and protests due on or before January 21, 2015. Motions to intervene were filed by Westar Energy, Inc., American Electric Power Service Corporation, South Central MCN, LLC, Sunflower Electric Power Corporation, Mid-Kansas Electric Company, LLC, and Xcel Energy Services Inc. In addition, the market monitor filed a motion to intervene and comments in support of the proposed Tariff revisions.

8. On April 13, 2015, SPP filed a response to a deficiency letter dated February 27, 2015. Notice of the SPP response to the deficiency letter was published in the

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[5] December 2014 Filing at 5 (citing MISO Tariff, Module D, sections 64.1.2(v)-(vi), 64.1.3). As discussed below, these provisions relate to the monitoring of uneconomic production for the purpose of mitigation in the MISO energy market.

[6] *Id.*

*Federal Register*, 80 Fed. Reg. 22,172 (2015), with interventions and protests due on or before May 4, 2015. None was filed.

9. In its comments supporting the SPP proposal, the market monitor maintains that targeted market monitoring screens that identify specific behavior are crucial for the market monitor's effective monitoring of market participant behavior.[7] The market monitor asserts that 50 percent of the short run marginal energy cost, as established by a resource's reference level, is an adequate threshold for deeming a resource offer to be uneconomic. The market monitor explains that because LMPs fluctuate with every dispatch, there must be some threshold around the cost of the resource before it is deemed to be uneconomic. Otherwise, the market monitor asserts, marginal resources would frequently be misidentified as uneconomic. The market monitor states that in cases where a resource causes persistent congestion, the LMP generally falls well below that resource's short run marginal cost (or reference level). The market monitor states that a typical example of uneconomic production would be a coal plant with a short run marginal cost of $20/MWh with an LMP persistently below or near $0/MWh at that resource's settlement location.[8] According to the market monitor, in most uneconomic production cases of concern, the LMP is less than zero, thus the proposed LMP threshold is exceeded.[9]

10. The market monitor states that the most common uneconomic production screen failures involve a high minimum economic capacity operating limit or a low ramp rate down. The market monitor asserts that the mitigation thresholds in section 3.6 of Attachment AF, which SPP proposes to reference in section 4.6.1(a)(3) of Attachment AG for purposes of monitoring, will identify these as instances of concern. The market monitor contends that the proposed thresholds do not prohibit the market monitor from inquiring into and researching any situation, especially where large price or make whole payment impacts are apparent. The market monitor states that it has inquired into instances of increases in the minimum economic operating capacity limit, even when such changes do not exceed the proposed threshold. The market monitor argues that if the Commission is concerned about the proposed thresholds, the Commission should approve lower thresholds as opposed to removing the thresholds.[10]

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[7] Market Monitor Comments at 7.

[8] *Id.* at 4-5.

[9] *Id.*

[10] *Id.* at 5-6.

11. The market monitor disagrees with the Commission's statement in a January 29, 2014 order[11] noting that the application of the thresholds in section 3.6 of Attachment AF for uneconomic production is "not straightforward."[12] The market monitor asserts that, in the cases of both physical withholding and uneconomic production, the market participant may use physical parameters to limit the flexibility of the market in committing or dispatching resources economically and that each parameter limits the market in one direction or the other. The market monitor states that maximum capacity operating limits are lowered to withhold, while minimum capacity operating limits can be used to over-produce. The market monitor also states that by lowering bi-directional ramp rate parameters, a market participant may over-produce or withhold. The market monitor argues that such physical parameters (e.g., maximum operating limit) only limit the market dispatch or commitment with modification in a single direction.[13]

12. The market monitor also contests the January 2014 Order's statement that a market participant could attempt to produce uneconomically by reducing time-based or minimum limit parameters in order to increase the likelihood of dispatch by the market.[14] The market monitor states that such behavior on its own does not constitute uneconomic production because the described behavior would increase the flexibility offered to the market by the market participant. The market monitor argues that to achieve unjust financial benefits from the market through uneconomic production, the market participant must couple the flexible offer with a limiting parameter modification that deviates from the true capability of the resource.[15]

13. The market monitor states that the Commission's directive in the January 2014 Order removed all thresholds to be applied to physical operating parameters. The market

[11] *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,050 (2014) (January 2014 Order).

[12] Market Monitor Comments at 6 (citing January 2014 Order, 146 FERC ¶ 61,050 at P 195).

[13] *Id*.

[14] *Id.* (citing January 2014 Order, 146 FERC ¶ 61,050 at P 194).

[15] The market monitor states that this was the case in "Strategy D" and "Strategy F" described in the Commission's Consent Agreement with JP Morgan Ventures Energy Corporation. *See id.* at 7 (citing *In Re Make-Whole Payments and Related Bidding Strategies*, 144 FERC ¶ 61,068 (2013) (Order Approving Stipulation and Consent Agreement)).

monitor asserts, however, that it needs targeted monitoring thresholds that identify specific behavior (such as uneconomic production).[16]

## IV. Deficiency Letter and Response

14. In response to questions related to the proposed imposition of the 50 percent LMP threshold, SPP states that it did not conduct any studies to support the level of the LMP threshold. However, SPP believes that this threshold is reasonable because MISO uses the same threshold. SPP states that it knows of no differences between the resources in SPP's market and the resources in MISO's market that would justify the use of alternative thresholds. SPP recognizes that MISO uses the 50 percent LMP threshold as part of its market power mitigation plan, while SPP proposes to use it for monitoring purposes for potential Commission referral only. SPP also states that there are differences between its process for identifying uneconomic production and MISO's process. SPP explains that these are merely differences in the specificity of the tariff language, as both SPP's and MISO's tariff provisions are intended to identify the same behavior.[17]

15. SPP states that nothing in Attachment AG explicitly requires the market monitor to investigate potential uneconomic production that does not violate the thresholds. However, SPP states that the market monitor must monitor market offers and settlements, and concerns with market behavior regularly arise through daily monitoring and communications with SPP, which may not be raised by the stated quantitative thresholds. SPP emphasizes that if, as a result of its daily monitoring and communications, the market monitor suspects a market violation occurs that does not trigger the proposed thresholds, the market monitor must refer it to the Commission pursuant to Attachment AG.[18]

16. In addition, SPP states that in December 2011, the market monitor proposed to include, in the Tariff, some mitigation (as opposed to monitoring) provisions for uneconomic production, which were similar to those in the MISO tariff. SPP states that in working with its members toward a consensus-supported process for market power

[16] *Id.* at 7.

[17] SPP Deficiency Response, Exhibit 1 at 1, 3-4.

[18] *Id.* at 6-7.

mitigation, SPP and the market monitor agreed not to include those provisions, with the understanding that the market monitor would propose them again in the future.[19]

17. Moreover, in response to questions regarding the proposed removal of language that had been required by the Commission in the June 2014 Order, SPP states that the market monitor believes it is just and reasonable to remove this language. This language requires the market monitor to monitor for time-based and other non-time and non-dollar based parameters that market participants submit which appear to facilitate production that is otherwise uneconomic. SPP states that the language is contained in a list of items meant to identify how uneconomic production is to be indicated, which SPP states creates a "circular indication of the behavior in question."[20] SPP states that the market monitor acknowledges that the removal of this language relaxes the market monitor's requirement to monitor for uneconomic production associated with these parameters. However, SPP asserts that this is reasonable as long as the thresholds it is using for monitoring are sufficient to identify market participant behavior that may have an adverse impact on the market. SPP states that the market monitor is willing to employ different thresholds, if directed by the Commission. However, SPP asserts that the market monitor needs some thresholds within the Tariff to monitor for uneconomic production. SPP argues that the reasonableness criterion requires the use of thresholds, rather than what it considers the current, vague language with respect to identification of uneconomic production from market participant conduct with respect to physical parameters. SPP states that based on its interpretation, the current Tariff implies that the market monitor needs to inquire into all instances where offer parameters may, but do not necessarily, facilitate uneconomic production. SPP explains that such instances occur any time a resource's output loads a transmission constraint and a physical parameter constrains the dispatch production, but most of these occurrences do not constitute uneconomic production. Accordingly, SPP finds that this broad requirement is not an efficient use of the market monitor's or the market participants' time and resources.[21]

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[19] *Id.* at 3-4.

[20] *Id.* at 5.

[21] *Id.* at 5-6.

## V. Discussion

### A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

### B. Substantive Matters

19. We reject SPP's proposed revisions to the market monitoring provisions for uneconomic production in section 4.6.1 of Attachment AG. With respect to the proposed language in the initial clause of section 4.6.1(a) of Attachment AG, we find that SPP has failed to support the proposal as just and reasonable. SPP has not provided sufficient evidence or analysis demonstrating how this quantitative threshold will achieve its intended objective.

20. We further disagree with SPP's claim that the proposed additional language is just and reasonable because it would make SPP's provisions regarding monitoring for uneconomic production similar to those found in the MISO tariff. We recognize important distinctions between the application of the 50 percent LMP threshold in the SPP Tariff and in the MISO tariff.

21. First, the 50 percent LMP threshold proposed by SPP is an over-arching condition which would need to be satisfied in addition to one of several other criteria in order to trigger further analysis by the market monitor, while this is not universally the case in the MISO tariff. According to SPP's proposal, a resource generating outside its operating tolerance will only indicate potential uneconomic production if the 50 percent LMP threshold is also breached. The most comparable output-based condition in MISO (which MISO uses for purposes of mitigation rather than monitoring)[22] can result in a finding of uneconomic production without consideration of the energy being scheduled at a location where the LMP is less than 50 percent of the applicable reference level. Accordingly, SPP's proposal appears less likely to identify output-based uneconomic

[22] The condition in the MISO tariff provides that real-time output from a generating resource that exceeds 110 percent of the set point instructions and causes a binding transmission constraint or binding reserve zone constraint can result in a finding of uneconomic production. MISO Tariff, Module D, sections 64.1.2(v)-(vi), 64.1.3. SPP addresses congestion and reserve zone constraints in section 4.6.1(b) of Attachment AG in its Tariff.

production in monitoring than MISO's standard for mitigating such output-based uneconomic production.

22. We reject SPP's proposal to incorporate a 50 percent LMP threshold as an over-arching condition, rather than as an additional criteria for triggering further review by the market monitor, because we find that it would too significantly narrow the scope of behavior that will trigger additional review.

23. We also note that the criterion in section 64.1.3.a.i of Module D in the MISO tariff relates to the identification of behavior that may be mitigated by MISO, while the uneconomic production standard in section 4.6.1 of Attachment AG in the SPP Tariff relates to monitoring for behavior that may be referred to the Commission by the market monitor. The MISO tariff provides for mitigation of uneconomic production that meets these thresholds (and is not otherwise justified as established in the tariff) via either the prospective application of a default offer or, when that is not possible, via the imposition of a sanction in accordance with section 65.3 of the MISO tariff. In contrast, SPP's standards for uneconomic production are located in Attachment AG of the Tariff, which contains general market monitoring provisions. Despite SPP's argument that both tariff provisions are intended to identify the same behavior and the differences between the two are merely differences in the specificity of tariff language, we nonetheless find a distinction between monitoring and mitigation.[23]

24. Neither SPP nor its market monitor has explained why the proposed language relating to the 50 percent LMP standard is just and reasonable with respect to these issues. Because SPP relies upon the MISO mitigation approach as support for the proposed revision, but does not further explain why the differences in SPP's proposed approach are appropriate in the SPP market, we find that SPP has not shown that the modifications it proposes to the Tariff on this issue are just and reasonable.

25. With respect to the proposed revisions to section 4.6.1(a)(3) of Attachment AG, SPP is proposing revisions that the Commission previously rejected in the January 2014 Order, as well as the removal of language that SPP was required to add by the Commission in the June 2014 Order. The Commission previously rejected, as "not

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[23] *Compare* SPP Tariff, Attachment AF, section 1 (stating that the purpose of the Market Mitigation Measures contained in the Market Power Mitigation Plan in Attachment AF is to "provide for mitigation of the exercise of horizontal and vertical market power by Market Participants in certain specified circumstances") *with* SPP Tariff, Attachment AG, section 1.1 (stating that the Market Monitoring Plan contained in Attachment AG "is intended to provide for the monitoring of Markets and Services and submissions of recommendations to the FERC and the SPP Board of Directors.").

straightforward," an attempt by SPP to reference in section 4.6.1.(a)(3) of Attachment AG the offer parameters for economic withholding included in section 3.6 of Attachment AF.[24] Moreover, the Commission previously directed SPP to include in section 4.6.1(a)(3) the broad language providing that potential uneconomic production will be indicated when "a Resource is subject to a time-based or other resource offer parameter (non-time and non-dollar based) that appears to facilitate uneconomic production."[25] If SPP or the market monitor had concerns with the Commission's actions in the January 2014 Order and June 2014 Order on these findings, SPP or the market monitor should have filed a timely request for rehearing on these issues. Thus, this proposal by SPP constitutes an impermissible untimely request for rehearing, and we reject it.[26]

26. Additionally, while SPP claims that its proposed revisions to section 4.6.1(a)(3) of Attachment AG are similar to MISO's tariff, as noted above, MISO includes its corresponding threshold provisions in its market power mitigation provisions, rather than within monitoring provisions for Commission referrals, as SPP proposes. Because the screening for uneconomic production is found in the monitoring rather than mitigation section of the SPP Tariff and the SPP Tariff does not currently mitigate uneconomic production, there should be a more expansive view of what may constitute uneconomic production within Attachment AG. While SPP states that it reads the current language to imply that the market monitor needs to inquire into all instances where offer parameters may, but do not necessarily, facilitate uneconomic production, we do not interpret the current language in this manner. Rather, we read the current monitoring provisions to mean that the market monitor should look for patterns of behavior and combinations of offers of physical and financial offer parameters that may, in concert, allow a market participant to uneconomically produce.

27. SPP indicates that in December 2011, the market monitor proposed mitigation measures for uneconomic production similar to those used by MISO. SPP states that, in the course of its stakeholder process, the market monitor agreed to table its proposal, with the understanding that it would propose such mitigation measures at some future time.[27]

[24] January 2014 Order, 146 FERC ¶ 61,050 at P 194.

[25] June 2014 Order, 147 FERC ¶ 61,212 at P 33.

[26] *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,206, at P 3 (2006); *New England Power Pool*, 89 FERC ¶ 61,022, at 61,076 (1999); *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) (stating that the 30-day time limit "is as much a part of the jurisdictional threshold as the mandate to file for a rehearing").

[27] SPP Deficiency Response, Exhibit 1 at 3-4.

We note that SPP did not file such mitigation provisions during the Integrated Marketplace proceeding, nor has it since filed such provisions. Including mitigation thresholds for uneconomic production within market power mitigation provisions in Attachment AF of the SPP Tariff may be appropriate, and we encourage SPP and its stakeholders to continue to develop such provisions. For example, conduct thresholds for offer parameters related to the short run marginal cost of production as established in the reference level, along with impact thresholds associated with effects on LMPs and Marginal Clearing Prices, may be appropriate.

28. We note that, although we are rejecting the specific Tariff revisions proposed by SPP, we encourage the market monitor to utilize internally-developed thresholds related to uneconomic production, in addition to any thresholds already included in SPP's Tariff, to help it identify behaviors that may need to be referred to the Commission.

<u>The Commission orders</u>:

SPP's proposed Tariff revisions are hereby rejected, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.